1952

File No. Cattle Trespass II/52 (N)

Legal Department

B. **BRANCH**

K S R

Subject:—

Notifications under

the cattle Trespass Act,

1871

P2/E

File No.: Cattle Trespass II/52(N)

Gen. 194

590

Legal Department.

In place of draft erratum at page 5 ante, two draft notifications are sent herewith.

2. Ramdurg and the villages specified by the District Magistrate, Bijapur, in his letter No.CPD, dated the 14th May 1952, having been now transferred to the Belgaum District, will have to be shown under that district in the Government Notifications, Home Department, No.9792/5, dated the 2nd August 1951 and the 3rd March 1952. Though an erratum canbe issued for substituting the correct names of certain villages mentioned by the District Magistrate, the amendments mentioned above being material, it would be better to issue notifications amending the Home Department notifications of the 2nd August 1951 and the 3rd March 1952.

3. The village specified at entry No.(126) in the Home Department notifications in question is "Halagatti" while the District Magistrate, Bijapur, refers to it as "Halgalli" in his letter at page 1 ante. The Home Department should verify the correct spelling of the village.

Id/-
26/6 J.R.D.

Additional DeputySecretary to Government.

U.R. to H.D.,No. 10673, dated the 27th June 1952.

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Legal Department.

Section 12 of the Cattle-trespass Act, 1871, provides that for every cattle impounded the pound keeper shall levy a fine in accordance with the scale for the time being prescribed by the State Government. Section 17 of the Act provides that the surplus unclaimed proceeds of the sale of cattle shall be sent to the Magistrate of the District, who shall hold them in deposit for three months, and if no claim thereto be preferred and established within that period shall, at its expiry, be deemed to hold them as part of the revenue of the State. Section 18 which next followed was repealed by the Adaptation Order of 1937. Before its repeal that section provided as follows:-

"Out of the sums received on account of fines and the unclaimed proceeds of the sale of cattle shall be paid -

(a) the salaries allowed to pound-keepers under the orders of the Local Government;

(b) the expenses incurred for the construction and maintenance of pounds, or for any other purpose connected with the execution of this Act;

and the surplus (if any), shall be applied, under orders of the Local Government, to the construction and repair of roads and bridges and to other purposes of public utility."

In the course of adaptation in 1937, section 18 was omitted on the ground that the fines levied for the purposes of preventing cattle trespass were in reality fees taken in respect of the prevention of cattle trespass and, therefore, formed part of the revenues of the Province as defined in section 136 of the Government of India Act, 1935. Similarly, the surplus unclaimed proceeds of the sale of cattle were considered, in view of section 174 of the Government of India Act, 1935, as vesting in His Majesty for the purposes of the Government

of the Province and, therefore, as forming part of the revenues of the Province. Since these revenues could not be withdrawn from the operation of section 78(2)(b) of the Government of India Act, 1935, they were subject to the vote of the Legislature and, therefore, any direction of these revenues for the purposes mentioned in section 18 of the Cattle-trespass Act was considered unconstitutional. It was on that ground that section 18 of the Cattle-trespass Act was omitted in the course of the adaptation of that Act in 1937. The same position continues to remain under the Constitution of India in view of the provisions of articles 266 and 296 of the Constitution. It was on this account that no change was made in sections 12 and 17 of the Cattle-trespass Act during the course of adaptation of the laws under article 372 of the Constitution. Since any expenditure as ~~proxidad~~ proposed out of the consolidated fund of the State would be subject to the vote of the Legislature, it would not be possible to amend sections 12 and 17 of the Cattle-trespass Act as proposed. The proposal made by the Director of Local Authorities is opposed to the Constitution and cannot be given effect to.

Id/-J.R.D. 18/6
Additional Secretary to Government.

U.R. to L.S.G. & P.H.D., No. 10275 ,dated the 20th June 1952.

BKS. 27/6/ 4c.